



California Regional Water Quality Control Board

San Diego Region



Terry Tamminen
Secretary for Environmental
Protection

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Arnold Schwarzenegger
Governor

May 20, 2004

Certified Mail – Return Receipt Requested

No. 7003 1680 0000 7393 6322

ARB, Inc.
26000 Commercentre Drive
Lake Forest, CA 92630
Attn: Ms. Lisa Nelson

In reply refer to:
IC:11-1140.02:kned

Dear Ms. Nelson:

**SUBJECT: COMPLAINT NO. R9-2004-0191 FOR ADMINISTRATIVE CIVIL
LIABILITY FOR MANDATORY MINIMUM PENALTY UNDER WATER
CODE § 13385, VIOLATION OF EFFLUENT LIMITATIONS, ORDER
NO. R9-2002-0020, NPDES NO. CAG679001**

FACILITY: CAPISTRANO DESALTER, SAN JUAN CAPISTRANO, CALIFORNIA

On August 29, 2003 the California Regional Water Quality Control Board, San Diego Region (Regional Board) Executive Officer issued an Enrollment Letter enrolling your facility under Order No. R9-2002-0020, NPDES No. CAG679001, *General Waste Discharge Requirements for Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or other Conveyance Systems, San Diego Region*, for the discharges of hydrostatic test water related to the development of groundwater recovery wells in the city of San Juan Capistrano, California.

Your application, received May 20, 2003, contained monitoring data of the proposed discharge that exceeded the Selenium water quality objective established in the California Toxics Rule (CTR), 40 Code of Federal Regulations Part 131. After additional monitoring data was received, it was expected that the discharge would meet the water quality objectives for Selenium. Because of the concerns with this constituent, the Regional Board's Enrollment Letter specified Daily Maximum and Monthly Average effluent limitations. These site specific effluent limitations were established pursuant to the *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (Implementation Policy) and serve as effluent limitations of Order No. R9-2002-0020.

Enclosed find Complaint No. R9-2004-0191, Administrative Civil Liability with Mandatory Minimum Penalty, for the amount of \$6,000 for violations of the effluent limitations.

California Environmental Protection Agency

The *October-December 2003 Quarterly Monitoring Report* submitted for your facility identified violations of effluent limitations for Selenium as shown below:

**Violation Summary for ARB, Inc. Hydrostatic Testing
October-December 2003 Quarterly Monitoring Report**

Date of Violation	Violation	Permitted Limitation	Reported or Calculated Value	Percent Exceedance
11/5/03	Selenium Daily Maximum	8.2 µg/l	8.3 µg/l	1.2 %
11/10/03	Selenium Daily Maximum	8.2 µg/l	9.1 µg/l	11 %
12/5/03	Selenium Daily Maximum	8.2 µg/l	11.0 µg/l	34 %
12/15/03	Selenium Daily Maximum	8.2 µg/l	9.4 µg/l	15 %
November 2003	Selenium Average Monthly	4.1 µg/l	8.7 µg/l	112 %

Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. A serious violation is a waste discharge that violates an effluent limitation contained in the applicable waste discharge requirements for a Group I pollutant, such as Selenium, by 40 percent or more. Section 13385(i)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each chronic violation whenever the person violates a waste discharge requirement four or more times in any period of six consecutive months.

In November 2003 the concentration of Selenium in ARB, Inc.'s discharge exceeded the applicable Average Monthly effluent limitation by more than 40 %. This effluent limitation violation is a "serious" violation under subdivision (h)(2) of Section 13385. ARB, Inc.'s discharge exceeded the applicable Daily Maximum effluent limitation for Selenium (less than 40 percent over the limit) on four occasions during a period of less than six consecutive months. These four effluent limitation violations are "chronic" violations under subdivision (i)(1) of Section 13385 of the Water Code. Therefore, under Water Code Section 13385 the amount of the mandatory minimum penalty that must be assessed for the Selenium exceedance is \$6,000.

Be aware that if ARB, Inc. intends to waive its right to a hearing before the Regional Board, you or an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the Complaint by 5:00 p.m., Wednesday, July 21, 2004. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$6,000 as set forth in the Complaint.

ARB, Inc.
Attn. Ms. Lisa Nelson
San Juan Capistrano Desalter

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May 20, 2004
WDID # 9 000001140

If ARB, Inc. does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on August 11, 2004, at the Regional Board Meeting Room, 9174 Sky Park Court, Suite 100, San Diego, CA 92123. The meeting is scheduled to begin at 9:00 a.m. In order for the Regional Board to fully consider any argument on your behalf, you should submit twenty copies of all documents, including exhibits, you intend to provide to the Regional Board by 5:00 p.m., Wednesday, July 28, 2004 as indicated in the enclosed *Submittal of Written Information Procedures*. Copies of material submitted will be forwarded to the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have questions regarding this letter please contact Ms. Sabine Knedlik at (858) 467-2725, or by e-mail at [kneds@rb9.swrcb.ca.gov](mailto:knedls@rb9.swrcb.ca.gov).

Respectfully,


JOHN H. ROBERTUS
Executive Officer

- Enclosures:
1. ACL Complaint No. R9-2004-0191
 2. Waiver of Hearing Form
 3. Submittal of Written Information Procedures
 4. Hearing Procedures
 5. Geomatrix, October-December 2003 Monitoring Report, Page 7, Table 3, Analytical and Monitoring Results
- cc:
1. Mr. Gene Spilker, Boyle Engineering Corporation, 1501 Quail Street, Newport Beach, CA 92660
 2. Mark Alpert, Regional Board

File: 11-1140.02
JHR:mpm:jrp:sk

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California Environmental Protection Agency

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